

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 96-212-W - ORDER NO. 98-654  
AUGUST 26, 1998

IN RE: Application of Upstate Heater Utilities, Inc.     ) ORDER ✓*MR*  
for Approval of a Transfer of its Water Utility     ) DENYING  
to South Carolina Water and Sewer, L.L.C.     ) PETITION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration and Motion for Oral Argument filed in this Docket by the Consumer Advocate for the State of South Carolina (the Consumer Advocate).

The Petition recounts the latest history of this case. Our Order No. 98-541, issued on July 15, 1998, denied a request by Mr. Chester Kapp to set a hearing on the transfer of the stock of Upstate Heater Utilities, Inc. (UHU) to Utilities of South Carolina, Inc. (USCI). In that Order, we held that the basis of Mr. Kapp's request, Regulation 103-704, did not apply to this acquisition via a stock transfer, because that regulation pertains to the acquisition of the assets of a system, not to the purchase or acquisition of the stock of the utility which owns or operates the system. We went on to explain that there are no known statutes or regulations which directly authorize the Commission to undertake the kind of proceeding which Mr. Kapp requests. We therefore denied Mr. Kapp's request for a hearing.

Subsequently, in Order No. 98-600, we denied Mr. Kapp's Petition for Rehearing and Reconsideration, but noted that we were deeply concerned about the allegations of Mr. Kapp's Petition, and stated that we would like to obtain the necessary authority to regulate stock transfers, be it through the statutory or regulatory process. We instructed Staff in that Order to look into what rule changes might be necessary in order to give this Commission the necessary jurisdiction in stock transfer matters. We think the same reasoning applies to the Consumer Advocate's Petition, and we therefore reaffirm Order No. 98-600.

The Consumer Advocate further states that we have, through Order Nos. 96-881 and 97-93, already decided that the transfer to a sister company of USCI is not in the public interest, and that we cannot therefore find this acquisition to be in the public interest, at least without a hearing. Again, we point out that the original proposed transfer was an asset transfer, which is clearly governed by the provisions of our Regulation 103-704. As we have held, this Regulation does not cover the transfer of stock. Therefore, we have no authority to approve or disapprove. We do not believe that *res judicata* principles apply when the factual situation is different and is not governed by the same regulation as the original transaction.

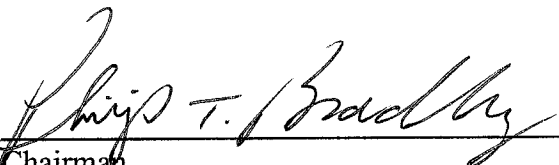
Our inability to regulate stock transfers precludes our ability to hold a hearing. Therefore the hearing requirements quoted by the Consumer Advocate are not applicable.

With regard to the Consumer Advocate's asserted Commission duty to protect the public interest, we cannot agree more. However, we once again note that it is our belief that we are without authority to do so in this case without proper authority. As has been

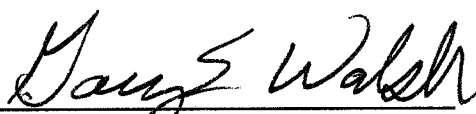
stated many times, the Commission is a creature of the Legislature, and we must operate under such authority as may be given by that body. Without that authority, we are not free to pursue certain areas, one of which is the transfer of a Company's stock. However, as we stated in Order No. 98-600, we do intend to seek a change by regulation or statute which will allow us to more fully protect the public in situations such as this one.

The Consumer Advocate's Petition must therefore be denied. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Acting Executive Director

(SEAL)